

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA

4 JANE ROCIO EVANS,

5 Plaintiff(s),

No. C 08-0894 PJH

6
7 v.

ORDER OF DISMISSAL

8 WALDEN HOUSE, INC.,

9 Defendant(s).
10 _____/

11 Pro se plaintiff filed this action on February 11, 2008, alleging some kind of
12 employment discrimination against defendant. She also requested leave to proceed in
13 forma pauperis ("IFP"). On May 9, 2008, the court dismissed the complaint pursuant to 28
14 U.S.C. § 1915(e), for lack of federal subject matter jurisdiction, and denied the IFP request.
15 The dismissal was with leave to amend. Plaintiff was given instructions on the deficiencies
16 in her complaint and was permitted to file an amended complaint curing those deficiencies
17 by May 30, 2008. Instead of filing an amended complaint, plaintiff filed on May 29, 2008, a
18 request to vacate judgment to dismiss complaint and on June 2, 2008, a request to vacate
19 order to dismiss complaint. Plaintiff argued in both documents why her complaint should
20 not have been dismissed, but did not clearly state what her claims are so that the court
21 could complete the review required by 28 U.S.C. § 1915. Accordingly, both requests were
22 denied.

23 Plaintiff was, however, given yet another opportunity to amend her complaint and
24 was told again that the amended complaint must contain the heading "Amended Complaint"
25 or "First Amended Complaint," and must clearly set forth the acts committed by defendant
26 that she is suing for, the dates these acts are alleged to have been committed, and the
27 legal basis for this court's federal subject matter jurisdiction. The deadline for filing the
28 amended complaint was extended to July 10, 2008. On July 8, 2008 plaintiff lodged, but
did not file, yet another document, this time untitled, in which she requested yet another

1 continuance of unspecified duration so that she could come to the courthouse on July 21,
2 2008 to look at the court file for this case and view the electronic record. She stated that
3 she had attempted on July 7, 2008 to "access records from Defendant's response at
4 Federal Courthouse, in order to adequately respond to statements that Plaintiff's Title VII
5 charge is not clear." Because plaintiff appeared to believe that Walden House had
6 objected in some way to her complaint and appeared to be attempting to obtain that
7 objection, the court explained again its obligation to screen her complaint in light of her IFP
8 request prior to service by the Marshal on defendant.

9 Plaintiff's attention was directed back to the May 9, 2008 order for instructions on
10 what she needed to show to establish federal jurisdiction. Because there is no federal
11 jurisdiction if plaintiff did not file an EEOC complaint within 180 days of the unlawful
12 employment practice, which appears to be her August 4, 2005 termination from Walden
13 House, plaintiff was advised to submit a copy of her EEOC complaint filed before February
14 4, 2006.

15 One last continuance was granted and plaintiff was warned that her case would be
16 dismissed if an amended complaint with the appropriate supporting documents was not
17 filed by July 24, 2008. Notwithstanding the three prior orders and specific instructions,
18 plaintiff has filed nothing.

19 The court having considered the five factors set forth in *Malone v. United States*
20 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), and having determined that
21 notwithstanding the public policy favoring the disposition of actions on their merits, the
22 court's need to manage its docket and the public interest in the expeditious resolution of the
23 litigation require dismissal of this action. In view of plaintiff's lack of response to this court's
24 prior order(s), the court finds there is no appropriate less drastic sanction. Accordingly, this
25 action is dismissed.

26 IT IS SO ORDERED.

27 Dated: July 30, 2008



28
PHYLLIS J. HAMILTON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JANE R EVANS,

Plaintiff,

v.

WALDEN HOUSE INC.,

Defendant.

Case Number: CV08-00894 PJH

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 31, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jane Rocio Evans
PO Box 424886
San Francisco, CA 94142

Dated: July 31, 2008



Richard W. Wieking, Clerk
By: Nichole Heuerman, Deputy Clerk